

ASSEMBLY BILL

No. 1951

Introduced by Assembly Member Vargas

February 14, 2002

An act to amend Section 11024 of the Business and Professions Code, and to amend Sections 1689.5 and 1689.24 of the Civil Code, relating to home solicitations.

LEGISLATIVE COUNSEL'S DIGEST

AB 1951, as introduced, Vargas. Home solicitation contracts: timeshare projects.

(1) Existing law regulates the content and effect of home solicitation contracts or offers, as defined, and seminar sales solicitation contracts or offers, as defined. Existing law defines goods and services for the purposes of these provisions, excepting from these definitions specified items and activities.

This bill would except from the definition of home solicitation contract or offer and seminar sales solicitation contract or offer, and from their respective definitions of goods and services, a contract or offer to purchase a timeshare estate or a timeshare use in a timeshare project, as defined, and any goods or services that are offered as part of, or incidental to, a timeshare estate or a timeshare use in a timeshare project, including, an exchange program or incidental benefit, as defined.

(2) Existing law provides that a person who has made an offer to purchase a timeshare estate or timeshare use in a timeshare project, as defined, has the right to rescind a contract resulting from the acceptance of the offer until midnight of the 3rd calendar day, as specified.

This bill would provide that a person has the right to rescind the above described contract until midnight of the 7th calendar day, as specified. This bill would also require that the offer to purchase the timeshare estate or timeshare use include the date the purchaser executes the offer to purchase, as specified, and a statement regarding the right to rescind, as specified.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 11024 of the Business and Professions
2 Code is amended to read:
3 11024. (a) A person who has made an offer to purchase a
4 ~~time-share~~ timeshare estate or ~~time-share~~ timeshare use in a
5 ~~time-share~~ timeshare project, as defined in Section 11003.5, shall
6 have the right to rescind any contract resulting from the acceptance
7 of the offer until midnight of the ~~third~~ seventh calendar day
8 following the day on which the prospective purchaser executed the
9 offer to purchase.
10 (b) The owner of a subdivision, as defined in subdivision (e) of
11 Section 11004.5, or his or her agent, shall, in accordance with
12 regulations adopted by the Real Estate Commissioner, clearly and
13 conspicuously disclose to all prospective purchasers of ~~time-share~~
14 timeshare interests the right of rescission provided for in
15 subdivision (a), and shall furnish to each offeror a form, as
16 prescribed by regulations of the commissioner, for the exercise of
17 the right of rescission. *The offer to purchase described in*
18 *subdivision (a) shall include the date the purchaser executes the*
19 *offer to purchase, and shall contain, in immediate proximity to the*
20 *space reserved for the signature of the purchaser, a conspicuous*
21 *statement in capitalized letters in a type size at least equal to the*
22 *predominant type size of the contract, as follows: "YOU, THE*
23 *BUYER, MAY CANCEL THIS TRANSACTION AT ANY TIME*
24 *PRIOR TO MIDNIGHT OF THE SEVENTH CALENDAR DAY*
25 *AFTER THE DATE OF THIS TRANSACTION. SEE THE*
26 *NOTICE OF CANCELLATION FORM ATTACHED TO THE*
27 *FRONT PAGE OF THE CALIFORNIA PUBLIC REPORT*
28 *ISSUED BY THE REAL ESTATE COMMISSIONER FOR AN*
29 *EXPLANATION OF THIS RIGHT."*



(c) Any certificate bearing the signature of the purchaser of a ~~time-share~~ *timeshare* estate or ~~time-share~~ *timeshare* use in a ~~time-share~~ *timeshare* project, as defined in Section 11003.5, which contains an adequate description of the interests sold and a statement by the purchaser that he or she has not exercised the right of rescission within the time limit set forth herein shall constitute conclusive evidence that the right of rescission has not been exercised in any matter involving the rights of a third party who has acted in good faith in reliance upon representations in the certificate. *This subdivision may not be construed to allow a purchaser to waive his or her right of rescission before the expiration of the time set forth in subdivision (a).*

(d) A purchaser may bring an action for recovery of actual damages or other equitable relief against the owner of a subdivision, as defined in subdivision (e) of Section 11004.5, or his or her agent, for a violation of this section. Upon finding a violation of this section, the court shall award rescission of the contract, if the purchaser pleads rescission. The court may also award:

(1) All damages actually suffered by a purchaser.

(2) Reasonable attorney's fees and costs to the prevailing purchaser.

(3) Other relief deemed appropriate to carry out the intent of this section.

SEC. 2. Section 1689.5 of the Civil Code is amended to read:

1689.5. As used in Sections 1689.6 to 1689.11, inclusive, and in Section 1689.14:

(a) (1) "Home solicitation contract or offer" means any contract, whether single or multiple, or any offer which is subject to approval, for the sale, lease, or rental of goods or services or both, made at other than appropriate trade premises in an amount of twenty-five dollars (\$25) or more, including any interest or service charges.

(2) "Home solicitation contract" does not include any *of the following*:

(A) Any contract under which the buyer has the right to rescind pursuant to Title 1, Chapter 2, Section 125 of the Federal Consumer Credit Protection Act (P.L. 90-321) and the regulations promulgated pursuant thereto, ~~or any~~.

1 (B) Any contract or offer to purchase a timeshare estate or a
2 timeshare use in a timeshare project, as defined in Section 11003.5
3 of the Business and Professions Code, nor any goods or services
4 that are offered as part of, or incidental to, a timeshare estate or
5 a timeshare use in a timeshare project, including, without
6 limitation, an exchange program or incidental benefit, as defined
7 in Section 11003.5 of the Business and Professions Code.

8 (C) Any contract for repair services with a contractor who is
9 duly licensed pursuant to Chapter 9 (commencing with Section
10 7000) of Division 3 of the Business and Professions Code, if (1)
11 the contract price is less than one hundred dollars (\$100), (2) the
12 negotiation between the parties was initiated by the prospective
13 buyer, and (3) the contract contains a written and dated statement
14 signed by the prospective buyer stating that the negotiation
15 between the parties was initiated by the prospective buyer.

16 (b) "Appropriate trade premises," means premises where
17 either the owner or seller normally carries on a business, or where
18 goods are normally offered or exposed for sale in the course of a
19 business carried on at those premises.

20 (c) (1) "Goods" means tangible chattels bought for use
21 primarily for personal, family, or household purposes, including
22 certificates or coupons exchangeable for these goods, and
23 including goods that, at the time of the sale or subsequently, are to
24 be so affixed to real property as to become a part of the real
25 property whether or not severable therefrom, ~~but~~.

26 (2) "Goods" does not include any of the following:

27 (A) Any vehicle required to be registered under the Vehicle
28 Code, ~~nor any~~.

29 (B) Any goods sold with this vehicle if sold under a contract
30 governed by Section 2982, ~~and does not include any~~.

31 (C) A timeshare estate or timeshare use interest in a timeshare
32 project, as defined in Section 11003.5 of the Business and
33 Professions Code, or any goods or services that are offered as part
34 of, or incidental to, a timeshare estate or a timeshare use in a
35 timeshare project, including, without limitation, an exchange
36 program or incidental benefit, as defined in Section 11003.5 of the
37 Business and Professions Code.

38 (D) Any mobilehome, as defined in Section 18008 of the Health
39 and Safety Code, ~~nor any~~.

1 (E) Any goods sold with this mobilehome if either are sold
2 under a contract subject to Section 18036.5 of the Health and
3 Safety Code.

4 (d) (1) “Services” means work, labor and services, including,
5 but not limited to, services furnished in connection with the repair,
6 restoration, alteration, or improvement of residential premises, or
7 services furnished in connection with the sale or repair of goods
8 as defined in Section 1802.1, and courses of instruction, regardless
9 of the purpose for which they are taken, ~~but~~.

10 (2) “Services” does not include ~~the~~ any of the following:

11 (A) The services of attorneys, real estate brokers and salesmen,
12 securities dealers or investment counselors, physicians,
13 optometrists, or dentists, ~~nor financial~~.

14 (B) Financial services offered by banks, savings institutions,
15 credit unions, industrial loan companies, personal property
16 brokers, consumer finance lenders, or commercial finance lenders,
17 organized pursuant to state or federal law, that are not connected
18 with the sale of goods or services, as defined herein, ~~nor the~~.

19 (C) The sale of insurance that is not connected with the sale of
20 goods or services as defined herein, ~~nor services~~.

21 (D) Services that are offered as part of, or incidental to, a
22 timeshare estate or a timeshare use in a timeshare project,
23 including, without limitation, an exchange program or incidental
24 benefit, as defined in Section 11003.5 of the Business and
25 Professions Code.

26 (E) Services in connection with the sale or installation of
27 mobilehomes or of goods sold with a mobilehome if either are sold
28 or installed under a contract subject to Section 18036.5 of the
29 Health and Safety Code, ~~nor services~~.

30 (F) Services for which the tariffs, rates, charges, costs, or
31 expenses, including in each instance the time sale price, is required
32 by law to be filed with and approved by the federal government or
33 any official, department, division, commission, or agency of the
34 United States or of the state.

35 (e) “Business day” means any calendar day except Sunday, or
36 the following business holidays: New Year’s Day, Washington’s
37 Birthday, Memorial Day, Independence Day, Labor Day,
38 Columbus Day, Veterans’ Day, Thanksgiving Day, and Christmas
39 Day.

40 SEC. 3. Section 1689.24 of the Civil Code is amended to read:

1 1689.24. As used in Sections 1689.20 to 1689.23, inclusive:

2 (a) (1) “Seminar sales solicitation contract or offer” means
3 any contract, whether single or multiple, or any offer which is
4 subject to approval, for the sale, lease, or rental of goods or
5 services or both, made using selling techniques in a seminar setting
6 in an amount of twenty-five dollars (\$25) or more, including any
7 interest or service charges. ~~“Seminar~~

8 (2) “Seminar sales solicitation contract” does not include any
9 of the following:

10 (A) Any contract under which the buyer has the right to rescind
11 pursuant to Title 1, Chapter 2, Section 125 of the Federal
12 Consumer Credit Protection Act (P.L. 90-321) and the regulations
13 promulgated pursuant thereto ~~or any~~.

14 (B) Any contract or offer to purchase a timeshare estate or a
15 timeshare use in a timeshare project, as defined in Section 11003.5
16 of the Business and Professions Code, or any goods or services that
17 are offered as part of, or incidental to, a timeshare estate or a
18 timeshare use in a timeshare project, including, without limitation,
19 an exchange program or incidental benefit, as defined in Section
20 11003.5 of the Business and Professions Code.

21 (C) Any contract which contains a written and dated statement
22 signed by the prospective buyer stating that the negotiation
23 between the parties was initiated by the prospective buyer.

24 (b) “Seminar setting” means premises other than the residence
25 of the buyer.

26 (c) (1) “Goods” means tangible chattels bought for use
27 primarily for personal, family, or household purposes, including
28 certificates or coupons exchangeable for these goods, and
29 including goods which, at the time of the sale or subsequently, are
30 to be so affixed to real property as to become a part of the real
31 property whether or not severable therefrom, ~~but~~.

32 (2) “Goods” does not include any of the following:

33 (A) Any vehicle required to be registered under the Vehicle
34 Code, ~~nor any~~.

35 (B) Any goods sold with a vehicle if sold under a contract
36 governed by Section 2982, ~~and does not include any~~.

37 (C) A timeshare estate or timeshare use interest in a timeshare
38 project, as defined in Section 11003.5 of the Business and
39 Professions Code, or any goods or services that are offered as part
40 of, or incidental to, a timeshare estate or a timeshare use in a

1 *timeshare project, including, without limitation, an exchange*
2 *program or incidental benefit, as defined in Section 11003.5 of the*
3 *Business and Professions Code.*

4 (D) Any mobilehome, as defined in Section 18008 of the Health
5 and Safety Code, ~~nor any~~.

6 (E) Any goods sold with a mobilehome if either are sold under
7 a contract subject to Section 18036.5 of the Health and Safety
8 Code.

9 (d) (I) “Services” means work, labor and services, including,
10 but not limited to, services furnished in connection with the repair,
11 alteration, or improvement of residential premises, or services
12 furnished in connection with the sale or repair of goods as defined
13 in Section 1802.1, and courses of instruction, regardless of the
14 purpose for which they are taken, ~~but~~.

15 (2) “Services” does not include ~~the~~ any of the following:

16 (A) The services of attorneys, real estate brokers and salesmen,
17 securities dealers or investment counselors, physicians,
18 optometrists, or dentists, ~~nor financial~~:

19 (B) Financial services offered by banks, savings institutions,
20 credit unions, industrial loan companies, personal property
21 brokers, consumer finance lenders, or commercial finance lenders,
22 organized pursuant to state or federal law, which are not connected
23 with the sale of goods or services, as defined herein, ~~nor the~~.

24 (C) The sale of insurance which is not connected with the sale
25 of goods or services as defined herein, ~~nor services~~.

26 (D) Services that are offered as part of, or incidental to, a
27 timeshare estate or a timeshare use in a timeshare project,
28 including, without limitation, an exchange program or incidental
29 benefit, as defined in Section 11003.5 of the Business and
30 Professions Code.

31 (E) Services in connection with the sale or installation of
32 mobilehomes or of goods sold with a mobilehome if either are sold
33 or installed under a contract subject to Section 18036.5 of the
34 Health and Safety Code, ~~nor services~~.

35 (F) Services for which the tariffs, rates, charges, costs, or
36 expenses, including in each instance the time sale price, is required
37 by law to be filed with and approved by the federal government or
38 any official, department, division, commission, or agency of the
39 United States or of the State of California.

1 (e) “Business day” means any calendar day except Sunday, or
2 the following business holidays: New Year’s Day, Washington’s
3 Birthday, Memorial Day, Independence Day, Labor Day,
4 Columbus Day, Veterans’ Day, Thanksgiving Day, and Christmas
5 Day.

